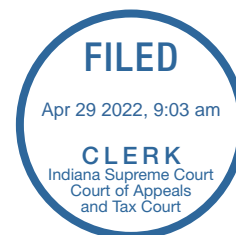


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Robert D. Carter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 29, 2022

Court of Appeals Case No.
21A-CR-2323

Appeal from the Howard Superior
Court

The Honorable William C.
Menges, Judge

Trial Court Cause No.
34D01-1010-FB-973
34D01-1706-F5-687

Pyle, Judge.

Statement of the Case

- [1] Robert D. Carter (“Carter”) appeals the trial court’s order revoking his probation. Carter argues that the trial court erred when allocating Carter’s credit time upon the revocation of his probation. Concluding that there was no error, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court erred when allocating Carter’s credit time upon the revocation of his probation.

Facts

- [3] In October 2010, the State charged Carter with Class B felony dealing in methamphetamine, Class D felony possession of methamphetamine, and Class D felony possession of a controlled substance in Cause Number 34D01-1010-FB-973 (“Cause FB-973”). In March 2011, Carter pled guilty to Class B felony dealing in methamphetamine in Cause FB-973. The plea agreement provided that Carter would serve ten (10) years, with five (5) years executed in the Indiana Department of Correction (“DOC”) and five (5) years suspended to probation in Cause FB-973. In April 2011, the trial court sentenced Carter as set out in the plea agreement.
- [4] In September 2013, the State filed a petition to revoke Carter’s probation (“Probation Violation #1”) in Cause FB-973, alleging that Carter had failed to report to the probation department as required. On March 30, 2016, Carter

admitted that he had violated his probation, and the trial court ordered Carter to serve 730 days or two years of his previously suspended sentence from Cause FB-973.

[5] In January 2017, the State filed a second petition to revoke Carter's probation (Probation Violation #2) in Cause FB-973, alleging that Carter had failed to report for a urine drug test, tested positive for amphetamines, and failed to report to the probation department as required. Subsequently, in June 2017, the State charged Carter, in Cause Number 34D01-1706-F5-687 ("Cause F5-687"), with Level 5 felony possession of methamphetamine, Class B misdemeanor false informing, and Class C misdemeanor possession of paraphernalia.

[6] In September 2017, Carter entered into a plea agreement for the Probation Violation #2 in Cause FB-973 and for the pending charges in Cause F5-687. Specifically, Carter agreed to admit to the probation violations in Cause FB-973 and to serve the balance of his previously suspended sentence. In Cause F5-687, Carter agreed to plead guilty to a lesser included offense of Level 6 felony possession of methamphetamine in exchange for the dismissal of the remaining charges, and he agreed to an executed sentence in the DOC.

[7] In November 2017, the trial court then entered a sentencing order in both causes. The trial court found, based on Carter's admission, that Carter had violated his probation in Cause FB-973. In Cause FB-973, the trial court ordered Carter to serve the balance of his previously suspended sentence, which was 1,095 days or three years, in the DOC. In Cause F5-687, the trial court

accepted Carter's guilty plea, entered judgment of conviction for Level 6 felony possession of methamphetamine, and dismissed the remaining charges. The trial court imposed an executed sentence of 730 days or two years to be served consecutively to the sentence in Cause FB-973. In both causes, the trial court recommended that Carter be placed in a therapeutic community program while in the DOC, and the trial court stated that, upon Carter's successful completion of that therapeutic program, it would consider modifying Carter's sentences in both causes.

[8] Subsequently, in February 2019, Carter filed a request for sentence modification in both causes. The trial court held a hearing on Carter's sentence modification motions in May 2019 and then referred the matter to the Howard County Problem-Solving Court for an assessment.

[9] Thereafter, on June 27, 2019, the trial court issued, in Cause FB-973, an order granting Carter's sentence modification request. Specifically, the trial court ordered Carter's sentence "be modified to provide for release from the [DOC] on December 23, 2019." (App. Vol. 2 at 154). The trial court also authorized Carter to be released that same day, June 27, 2019, to Howard County's Community Transition Program with electronic monitoring through Community Corrections. Additionally, the trial court "further modified [Carter's sentence in Cause FB-973] to reflect that the balance of [Carter's] executed sentence [wa]s [t]hereby suspended, to be served on Supervised Probation." (App. Vol. 2 at 154). Furthermore, "[a]s a further specific condition of [Carter's] Community Transition Program and Probation," the

trial court ordered Carter to “successfully complete . . . the Howard County Re-Entry Program[,]” which is a subdivision of the county’s Problem-Solving Court. (App. Vol. 2 at 154).

[10] The following day, on June 28, 2019, the trial court issued an order granting Carter’s sentence modification request in Cause F5-687. The trial court ordered that the “balance of [Carter’s] executed sentence [wa]s [t]hereby suspended, to be served on Supervised Probation.” (App. Vol. 3 at 43). The trial court also ordered Carter, as a specific condition of his probation, to “successfully complete . . . the Howard County Re-Entry Program as ordered in connection with [Cause FB-973].” (App. Vol. 3 at 43). The trial court did not place Carter in the Community Transition Program for Cause F5-687.

[11] On July 25, 2019, Carter filed with the trial court a “Howard County Problem-Solving Court Program Participation Agreement[,]” in which Carter agreed to participate in the county’s Re-Entry Court Program (“Re-Entry Court Program Agreement”). (App. Vol. 2 at 156; App. Vol. 3 at 44). This Re-Entry Program Agreement applied to both causes. As part of this agreement, Carter specifically agreed to “waive[] any right to credit time on the referring sentence for any period of sanction, of whatever variety, imposed while [he was] enrolled in a Howard County Problem-Solving Court[’s]” Re-Entry Court Program. (App. Vol. 2 at 156; App. Vol. 3 at 44). Carter also agreed to be under the supervision of the Problem-Solving Court and to have his progress in the program monitored by the judge.

- [12] On July 8, 2021, the Re-Entry Court Program Coordinator filed a notice of termination in both causes. Specifically, the Re-Entry Court Program Coordinator informed the trial court that the Re-Entry Court Program intended to terminate Carter's participation in the program due to Carter absconding from the Re-Entry Court Program and violating the terms of the program.
- [13] On July 15, 2021, the trial court held a hearing on the Re-Entry Court Program's notice of termination, and Carter admitted that he had violated the terms of the Re-Entry Court Program in both causes. Thereafter, on July 20, 2021, the trial court entered an order terminating Carter from the Re-Entry Court Program in both causes.
- [14] The State subsequently filed a petition to revoke Carter's probation in both causes based on his failure to successfully complete the Re-Entry Court Program. During an August 2021 hearing, Carter admitted that he had violated probation as alleged. The trial court determined that Carter had violated his probation in both causes and scheduled a sentencing disposition hearing for September 2021.
- [15] On September 28, 2021, the trial court conducted the sentencing disposition hearing. During this hearing, Carter informed the trial court that he "had served about 2,804 actual days" of his aggregate sentence and that "based on some of that period[,] [he] might have served substantially more of [his] entire sentence." (Tr. Vol. 2 at 11). Carter stated that if the trial court were to determine that credit time would not apply to his time in the Re-Entry Court

Program and if he still had time remaining to be served on his executed sentence, then he asked the trial court to place him in community corrections. The State questioned whether Carter could receive credit time for his time in the Re-Entry Court Program and stated that it left it up to the trial court's discretion since it had a "better . . . understanding[.]" (Tr. Vol. 2 at 14).

[16] The trial court determined that Carter had already satisfied his sentence in Cause FB-973. The trial court also determined that the balance of Carter's suspended sentence in Cause F5-687 was 700 days, and the trial court stated that it intended to order that that balance be served in the DOC. Carter questioned whether the trial court could apply the credit time that he would have earned while he had been monitored by the Community Transition Program in Cause FB-973 from June 27, 2019 to December 23, 2019 to his 700-day sentence in Cause F5-687. The trial court stated that it could not transfer any Community Transition Program credit time from Cause FB-973 to Cause F5-687 because Carter had not been assigned to the Community Transition Program for Cause F5-687, making him ineligible for any such credit time.

[17] Thereafter, on October 14, 2021, the trial court issued an order in Cause FB-973 and found that Carter's "executed sentence [in Cause FB-973] ha[d] been satisfied." (App. Vol. 2 at 214). Additionally, the trial court issued an order in Cause F5-687 and ordered Carter to serve the balance of his previously suspended 700-day sentence in the DOC. The trial court awarded Carter with jail credit time of "74 actual days or 148 credit days, served while awaiting trial and disposition in this matter." (App. Vol. 3 at 95). Carter now appeals.

Decision

- [18] Carter argues that the trial court erred in allocating his credit time upon the revocation of his probation. Specifically, Carter contends that a person who is assigned to a Community Transition Program is entitled to credit time pursuant to statute and that the trial court should have applied any credit time for his assignment to the Community Transition Program in Cause FB-973 to his executed sentence in Cause F5-687. We disagree.
- [19] “Because credit time is a matter of statutory right, trial courts do not have discretion in awarding or denying such credit.” *Harding v. State*, 27 N.E.3d 330, 331-32 (Ind. Ct. App. 2015). “To the extent that a claim involving credit time requires statutory interpretation, we engage in *de novo* review[,]” and “our primary goal is to determine and give effect to the intent of the legislature.” *Paul v. State*, 177 N.E.3d 472, 475 (Ind. Ct. App. 2021). “On appeal, it is the appellant’s burden to show that the trial court erred” in its calculation and allocation of credit time. *Harding*, 27 N.E.3d at 332.
- [20] Pursuant to INDIANA CODE § 11-10-11.5-10, “[a] person assigned to a community transition program continues to earn good time credit during the person’s assignment to a community transition program.” Here, the record on appeal reveals that Carter had been assigned to a Community Transition Program in only one cause, Cause FB-973.
- [21] The only issue before us in this appeal is whether the trial court erred by declining to allocate any credit time that Carter could have earned for the

assignment to the Community Transition Program in Cause FB-973 to his executed sentence ordered in Cause F5-687. We note that the language of INDIANA CODE § 11-10-11.5-10 allows a person assigned to a community transition program to earn credit time while assigned to that program. However, the record reveals that Carter had not been assigned to the Community Transition Program for Cause F5-687. Instead, the trial court had assigned Carter to the Re-Entry Court Program in Cause F5-687, and Carter specifically agreed to “waive[] any right to credit time on the referring sentence for any period of sanction, of whatever variety, imposed” while he was in that Re-Entry Court Program for Cause F5-687. (App. Vol. 3 at 44). Accordingly, the trial court did not err by declining to allocate any potential Community Transition Program credit time from Cause FB-973 to Carter’s executed sentence ordered in Cause F5-687. Therefore, we affirm the trial court’s judgment in this probation revocation proceeding.

[22] Affirmed.

May, J., and Brown, J., concur.